Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States

GARY K. PRUITT, *Petitioner*
v.
MAUREEN C. PRUITT, *Respondent*

On Petition for a Writ of Certiorari to the Supreme Court of Ohio

Petition for a Writ of Certiorari

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April 25, 2006

ISSUES PRESENTED

ISSUE NO. 1.

May a State Domestic Relations Court Divide Parties' Social Security Benefits in a Division of Property, Directly or Indirectly, in Violation of Section 407, Assignment of Benefits, 42 U.S.C. 407, and the Supremacy Clause of the United States Constitution, Thereby Frustrating Federal Law and Policy.

ISSUE NO. 2.

Was the Appellant Denied Due Process of Law by the Imposition and Enforcement of a Support Order in Violation of Section 303 of the Federal Consumer Credit Protection Act and the Supremacy Clause of the United States Constitution, Where the Trial Court Forfeited His Home and the Reviewing Court Upheld Both Actions Applying Criminal, Rather than Civil, Contempt Standards?

PARTIES TO THE PROCEEDING

The following individuals are parties to the proceeding in the Courts below:

Gary K. Pruitt, *Defendant-Appellant*; and

Maureen C. Pruitt, *Plaintiff-Appellee*

CORPORATE DISCLOSURE STATEMENT

No parties are corporations. Sup.Ct.R. 29.6

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays for a writ of certiorari be issued to review the dismissal of Petitioner's Appeals to the Supreme Court of the State Ohio. The Judgment of the Trial Court, affirmed by the Eighth District Court of Appeals, Cuyahoga County, Ohio, is in conflict with federal law, poses significant injury to the federal statutory scheme with respect to Social Security benefits and this issue affects a substantial number of divorcing parties throughout United States. The Judgment of the Trial Court in ordering support in conflict with federal statutes, the enforcement of that order through contempt proceedings and the forfeiture of the Petitioner's residence likewise conflict with federal statutes, pose a substantial threat to the federal statutory scheme, which limits garnishment of wages, and violates the Petitioner's right to due process of law.

These issues potentially affect every termination of marriage and therefore are of significant interest throughout the States. State Courts have issued, and continue to issue, conflicting rulings, and it is in the interest of the federal statutory scheme that this Court review and address the issues presented herein.

OPINIONS BELOW

The opinion and order of the Eight District Court of Appeals, Cuyahoga County, Ohio, is unpublished, but is Appendix "E" hereto.

JURISDICTION

The Judgments of the Supreme Court of the State of Ohio were entered on January 25, 2006. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fourteenth Amendment to the U.S. Constitution and Article VI of the U.S. Constitution, The Supremacy Clause

Section 407, Assignment of Benefits, of Subchapter 2 - Federal Old Age and Survivors and Disability Benefits. 42. U.S.C. 407

Section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. 1673 (b) and (c).

STATEMENT OF THE CASE AND BACKGROUND FACTS

This domestic litigation commenced in 2001 when the Appellee asked Appellant for a divorce. The hearing on the matter was conducted throughout the summer and fall of 2003, and a Judgment Entry was entered on February 12, 2004. See Appendix A. The Judgment Entry was amended *Nunc Pro Tunc* on February 23, 2004 to correct clerical errors. See Appendix "B".

The Appellant has a Bachelor's Degree and is a certified public accountant. Appellee has a Master's Degree in accounting, has an undergraduate degree in Spanish, has, or will soon have, a Master's Degree in accounting and has at least two (2) Teaching Certificates.

Pursuant to the Judgment Entry the Appellant was ordered to pay $7,532.46 of support to the Appellee per month, which was over 74% of his disposable income from his wages and to pay other

support amounts indirectly on Appellee's behalf. Appellant's employee withheld and paid to the support agency only 60% of the Appellant's disposable income in accordance with federal garnishment limitations, but in conflict with the Judgment Entry. Because Appellant was, from time to time, unable to pay the full amount of support due, Appellee filed a Motion to Show Cause. Eventually a contempt hearing was conducted, and a finding of contempt was entered by the Trial Court.

In its Judgment Entry, the Trial Court also divided the parties' future Social Security benefits and offset other marital property against Appellant's higher, hypothetical, Social Security benefits, resulting in the payment of current dollars to the Appellee for such benefits.

The Appellant filed his Appeal with respect to the Judgment Entry of Divorce dated February 12, 2004. The Eighth District Court of Appeals for Cuyahoga County issued its Journal Entry and Opinion on August 25, 2005. The Appellate Court affirmed the Trial Court in most respects, including the division of the parties' Social Security benefits, but reversed it with respect to the amount of child

support. See Appendix "E".

The Appellant also filed his Appeal of the Judgment of Contempt but the Court of Appeals, sua sponte, dismissed the Appeal citing *In Re Ralph Watts* (Jan. 31, 2002), Cuyahoga Appeals No. 78713, 78991. See Appendix "D". Appellant filed a Motion for Reconsideration but it was denied by the Court of Appeals as well. See Appendix "F".

The Appellant petitioned the Supreme Court of Ohio with respect to both the Eighth District Memorandum and Opinion of Order of August 25, 2005 and the Dismissal of the Appellant's appeal of the Finding of Contempt. On July 25, 2005, the Supreme Court of Ohio denied both Petitions as not involving any substantial constitutional question. See Appendices "G" and "H".

The record below reflects: that the Trial Court's Judgment Entry dramatically favored the Appellee in both the division of marital property and support; that the Trial Court eventually awarded the Appellee substantially all of the parties' assets; the Trial Court's prejudice toward Appellant and his employer, Ernst & Young; and that the Trial Court in chambers called Appellant a "liar" and invited

his counsel to file an Affidavit of Disqualification with the Supreme Court of Ohio.

With regard to the finding of contempt, the hearing on the matter was originally scheduled for October 25, 2004. It was continued numerous times. The hearing commenced originally on May 16, 2005 and was continued until June 28, 2005. Appellant remarried on Feb. 26, 2005 and sought new employment with Ernst & Young outside of the United States so that he could reside with his new wife in Australia. He was scheduled to report for work on July 1, 2005.

At the hearing on June 28, 2005, the evidence showed the arrearage to be $8,776, slightly more than one month of his combined spousal and child support obligation. The Court, however, never made a specific finding regarding the arrearage. Prior to the finding of Contempt, the Trial Court had called Sheriff's Deputies into his Courtroom and announced that the Appellant had to either **surrender his passport, quit-claim his residence to the Appellee or be jailed for thirty (30) days**, all off the record. The Appellant then offered to pay the Appellee the amount of $14,500, well in

excess of the actual arrearage due, which she accepted as a cure and as a purge of the Appellant's alleged contempt. Appellant actually wrote a check to the Appellee and handed the check to his counsel for delivery to the Appellee. When the Trial Court was advised by counsel of the Appellant's purge, the Trial Court refused to permit Appellant to do so and instead repeated his order, once again off the record. The Appellant then involuntarily quit-claimed his residence to the Appellee in order to avoid being jailed so that he could leave for Australia to commence his new employment and to reside with his new wife. Subsequently, the Trial Court entered the finding of contempt and indicated in its order that the Appellant had purged his contempt by the conveyance of his residence to the Appellee. See Appendix "C".

Had the Court of Appeals Decision of August 25, 2005 been issued prior to the June 28, 2005 contempt hearing, there would have been no arrearage.

I. REASONS FOR GRANTING THE WRIT-ISSUE NO. 1.

Section 407, Assignment of Benefits, of Subchapter 2 - Federal Old Age, Survivors and Disability Insured Benefits, 42 U.S.C. 407, provides in pertinent part as follows:

> (A) In General. The right of any person to any future payments under this subchapter shall not be transferable or assignable, at law or in equity, and none of the monies paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

Noteworthy in the statutory language is the fact that the restrictions are applicable to "any" future payments, which includes both an individual's payments and those provided for a spouse or a divorced spouse. Also noteworthy is that the restriction applies to transfers **or assignments** which are made either at law or in equity. A domestic relations court is a court of equity.

In the trial of this matter before the State Domestic Relations Court, no less than four (4) valuation experts dedicated nearly eight (8) full trial days to place a present value on the parties' future Social Security benefits for the purpose of dividing the assets – all over the repeated objections of counsel for this Appellant. The Trial Court

ultimately accepted the Appellee's expert's valuation and specifically included them as marital property. See Appendix "A" hereto, Judgment Entry. The Trial Court separately listed the valuation of the parties' Social Security benefits as marital property and allocated the values to each of them. Appellant was allocated a higher valuation and was ordered to pay the Appellee current dollars as a result of the difference. While there are a number of ways to characterize what the Trial Court has done, effectively Appellant in this instance was ordered to prepay hypothetical and speculative Social Security benefits to the Appellee.

A partial explanation of Social Security benefits is set forth in *Taylor v. Director, OWCP.*, 967 F.2d 961 (4th Cir. 1992), which cited *Director,* OWCP v. Ball, 826 F.2d 603 (7th Cir. 1987), as follows:

> The funds available for payment of social security benefits are generated from an excise tax on employers, 26 U.S.C. §3111(a) (1982), as well as from an income tax on individual wage earners, 26 U.S.C. § 3101(a) (1982). A recipient of Social Security benefits has no substantive right to a certain amount of benefits based on the amount contributed to the fund by employer and employee; rather, the recipient's amount of benefits is controlled by operation of law under 42 U.S.C. §402 (1982), a

> separate statutory scheme. *Cf. Heckler v. Mathews,* [465 U.S. 728, 737, 104 S.Ct. 1387, 1394, 79 L.Ed.2d 646 (1984)]. As a result, "eligibility for [social security] benefits, and the amount of such benefits, does not in any true sense depend on contribution to the program through the payment of taxes," which are levied on employer and employee alike. *Flemming v. Nestor,* [363 U.S. 603, 609, 80 S.Ct. 1367, 1371-72, 4 L.Ed.2d 1435 (1960)]. None of the criteria listed in the payment scheme mentions the amount contributed by the employer or employee. Moreover, Congress at any time could legislatively alter or abolish altogether contributions of employers and employees.

Id. at 607, 80 S.Ct. at 1370-71. Similar reasoning was employed by the court in *Director, OWCP v. Hill*, 831 F.2d 635 (6th Cir. 1987) (per curiam):

> **Social security is not operated like an annuity. Those who contribute to it are not entitled to a sum certain in return. There is no guarantee that one who has paid into the fund will ever receive anything from the fund. Once money is paid into the fund, any connection between the money and the contributor is broken.** The money becomes the property of the federal government, which is then responsible for making payments to eligible recipients in accordance with statutory standards.

Id. at 639 (following Ball in consolidated cases of a surviving divorced wife and a divorced wife). See also *Director, OWCP v. Logan*, 868 F.2d 285 (8th Cir. 1989) (per curiam) (following *Ball* in case of surviving divorced wife). **(emphasis added)**

Taylor v. Director, OWCP., 967 F.2d 961, 963-964 (4th Cir. 1992). The Court in *Taylor*, which was addressing the Black Lung Benefits Act of 1969, then went on to conclude that once contributions are made to the Social Security Pension Fund by an employee, that employee retains no property right in the money paid. Hence, any entitlement of a divorced spouse to those benefits is not provided from the contributor's property. Furthermore, the *Taylor* Court concluded that Congress can at any time legislatively alter or abolish altogether the Social Security benefit programs. *Taylor* at 964 citing *Director, OWCP v. Ball*, 826 F.2d 603, 607.

In addition to the foregoing, entitlement to benefits is subject to certain limitations and uncertainties that cannot be predicted. This was the case with respect to the Pruitts since normal retirement was at least fourteen (14) years away at the date of the divorce. These limitations and/or uncertainties include, but are not limited to, (1) changes to Social Security laws, (2) inadequacy of funding in the future, (3) future employment within the Social Security system (Appellant now works abroad), (4) death of one or both spouses, (5) remarriage, (6) salaries and benefits, and (7) longevity of the parties.

Indeed, notices from the Social Security Administration to participants now warn that the fund may not be adequate to pay future benefits, unless changes occur.

The Supreme Court of Ohio addressed this issue in *Neville v. Neville*, 99 O.St.3d 275 (2003), and held as follows:

> "...For the reasons that follow, we hold that a trial court, in seeking to make an equitable distribution of marital property, may consider the parties' future social security benefits in relation to all marital assets. Accordingly, we reverse the decision of the Court of Appeals."

Neville at 277. The *Neville* Court specifically reviewed and cited the holdings in this Court, including *Hisquierdo v. Hisquierdo* (1979), 439 U.S. 572 (railroad retirement benefits); *McCarty v. McCarty* (1981), 453 U.S. 210 (military retirement pay); *Mansell v. Mansell* (1989), 490 U.S. 581 (military disability benefits), concluding that federal law preempts state law that would allow a distribution of federal retirement benefits.

Since the *Neville* Decision, two other review courts in the State of Ohio have cited and followed *Neville*. In *Waller v. Waller*, 163 Ohio App.3d 303 (2005), the Seventh District Court of Appeals

of Ohio concluded that the Trial Court's consideration to the parties' Social Security benefits was reasonable. *Waller* at 313.

A second case illustrating the status of the law on this issue in the State of Ohio is *Hurte v. Hurte*, 164 Ohio App.3d 446 (2005), which was decided by the Fourth District Court of Appeals of Ohio on November 2, 2005. In *Hurte*, the appellant-wife complained that the trial court improperly exempted the husband's Social Security benefits from the marital estate and that she received no "offset" for that portion of her pension benefits. The Court of Appeals in *Hurte* remanded the Social Security issue to the trial court. *Id.* at 454. *Hurte*, just as the present case does, highlights the conflict between federal law and the State of Ohio's treatment of Social Security benefits. Specifically, the *Hurte* Court characterized the wife's SERS pension as an actual marital asset and characterized the husband's Social Security benefits as "hypothetical". The *Hurte* Court also "...recognized the resulting inequity and devised the **hypothetical Social Security offset**...". *Id.* at 452 citing *Walker v. Walker* (1996), 112 Ohio App.3d 90 **(emphasis added)**.

This issue and the treatment by other state courts is widely diverse and frequently in conflict with federal law. See, *Pleasant v. Pleasant,* 97 Md. App. 711 (1997); citing *Taylor v. Director, OWCP.*, 967 F.2d 961 (4th Cir. 1992), *Olson v. Olson*, 445 N.W.2d 1 (N.D. 1989); *Deering v. Deering*, 292 Md. 115 (1981), as an example of a holding by a state court which does not conflict with federal law.

This Court has addressed similar issues on four prior occasions in *Hisquierdo v. Hisquierdo* (1979), 439 U.S. 572, (on certiorari to the Supreme Court of California); *McCarty v. McCarty* (1981), 453 U.S. 210 (on certiorari to the First Appellate District Court of California); *Mansell v. Mansell* (1989), 490 U.S. 581 (on certiorari to the Fifth Appellate District Court of California); and in, *Rose v. Rose*, 481 U.S. 619 (1987) (on appeal from the Court of Appeals of Tennessee). However, to this petitioner's knowledge, the issue presented in the instant case, i.e., the division of Social Security benefits as marital property, has never been directly reviewed or addressed by this Court.

Hisquierdo, supra, involved the Railroad Retirement Act of 1974, which can be altered by Congress at any time, but benefits for an employee's spouse terminate upon divorce, unlike Social Security benefits. 45 U.S.C. §231c(3). Section 231(m) of the Railroad Retirement Act is very similar to 42 U.S.C. 407 insofar as:

> [n]o annuity [under the Act] shall be assignable or be subject to any tax or to garnishment, attachment, or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated.

45 U.S.C. §231(m). In *Hisquierdo*, supra, the Supreme Court of California held that, because the petitioner's employment was during marriage, the Railroad Retirement benefits that were accumulated were community property. It further held that Section 231(m) applied only to creditors and not to a divorcing spouse. This Court held that (i) an offsetting award for the expected value of respondent's interest in petitioner's statutory Railroad Retirement benefits would defeat the purpose of Section 231(m) of the Act and (ii) ordering the petitioner to pay his divorced spouse the monetary equivalent of a portion of his benefits under the Act would likewise contravene Section 231(m) of the Act.

In *Hisquierdo*, the Supreme Court noted that, on at least four (4) prior occasions, it had to intervene in order to forestall injury to federal rights by virtue of state community property law concepts. *Hisquierdo*, supra; citing *McCune v. Essig*, 199 U.S. 382 (1905); *Yiatchos v. Yiatchos*, 376 U.S. 306, (1964); *Free v. Bland*, 369 U.S. 663 (1962); and *Wissner v. Wissner*, 338 U.S. 655 (1950). The importance of Section 231(m) of the Act is that it intends to ensure that the benefits actually reach the beneficiary and it preempts state law that stands in its way. *Hisquierdo* at 584, citing *Philpott v. Essex County Welfare Board*, 409 U.S. 413 (1973); and *Wissner v. Wissner*, supra.

In the State of Ohio an "offsetting award" is now specifically permitted. *Hurte v. Hurte*, supra. But an "offsetting award" conflicts with *Hisquierdo*, where this Court held that an "offsetting award" would be an improper anticipation of payment by allowing a spouse to receive an interest before the date that Congress set for an interest to accrue and be paid. *Hisquierdo* at 590. This Court concluded in *Hisquierdo* that:

> [a]ny such anticipation threatens harm to the employee, and corresponding frustration to federal policy, over and above

> the mere loss of wealth caused by the offset. If, for example a nonemployee spouse receives offsetting property, and then the employee spouse dies before collecting any benefits, the employee's heirs or beneficiaries suffer to the extent that the offset exceeds the lump-sum death benefit the Act provides.

Hisquierdo at 589. This petitioner argued before the Trial Court, the Eighth District Court of Appeals and the Supreme Court of Ohio that there are a number of circumstances where he may never receive the benefits for which he was charged in the division of property. And, in fact, although it is not part of the record below, the latter scenario has actually occurred here. As of June 2005, the Appellant no longer participates in the Social Security system. Likewise, there are a number of circumstances where his divorced spouse may never receive the hypothetical benefits for which she was credited in the division of property. For example, she may remarry. She may die. She may earn adequate state retirement benefits to substantially reduce or offset her Social Security benefits attributed to her in the division of the marital estate.

In *McCarty v. McCarty* (1981), 453 U.S. 210, this Court addressed the question of whether military retirement pay benefits were subject to a division as quasi community property and held that

military retirement pay is a personal entitlement of the retiree, and the application of community property principles to military retirement pay threatens grave harm to a clear and substantial federal interest. In *McCarty*, this Court further determined that "state family and family property law must do 'major damage' to a 'clear and substantial' federal interest before the Supremacy Clause will demand that state law be overridden". *McCarty* at 220; quoting from *Hisquierdo*, supra at 581. In *McCarty*, the Supreme Court concluded that there was indeed a conflict between the terms of the federal retirement statutes pursuant to the Military Retirement Pay Act and the community property right asserted by the appellee in *McCarty*. See the discussions by this Court in *McCarty* at 234-235; citing *Free v. Bland*, 369 U.S. 663 (1962). This court also held that Congress has weighed this matter and it is not the province of state courts to strike a balance different from the one Congress has struck. *McCarty* at 236 citing *Hisquierdo* at 590.

Mansell v. Mansell (1989), 490 U.S. 581, was also on appeal from the Court of Appeals of California, Fifth Appellate District. The Opinion stated that, "...we decide whether state courts...may

treat as property divisible upon divorce military retirement pay waived by the retiree in order to receive veterans' disability benefits". *Mansell* at 583. Justice Marshall concluded in *Mansell* that, under the Act's plain and precise language, state courts have been granted the authority to treat disposable retirement pay as community property, but they have not been granted the authority to treat total retired pay as community property. *Mansell* at 589. Noteworthy is Fn. 2 at Page 584 of *Mansell*, where the Supreme Court stated that the language of the act covers both community property and equitable distribution states. Ohio is an equitable distribution state, but its domestic relations laws are substantially similar to those in community property states.

Finally, it is especially important that Congress has outlined the rights of divorced spouses to Social Security benefits with great particularity. See 42 U.S.C.A. 416(d)(1), et seq. and 42 U.S.C.A. 402 (b), et seq. Given the specificity of Congressional treatment of a divorced spouse's rights to Social Security benefits, it is an egregious affront to the federal statutory scheme when a state court divides parties' Social Security benefits as marital property.

II. REASONS FOR GRANTING THE WRIT-ISSUE NO. 2.

Section 303(b) of the Consumer Credit Protection Act provides restrictions on the amount that may be withheld for support of a person as follows:

> (A) Where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is issued), 50 per centum of such individual's disposable earnings for that week; and
>
> (B) Where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week; except that, with respect to the disposable earnings of any individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum specified in clause (B) shall be deemed to be 65 per centum, if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve week period which ends with the beginning of such workweek.

15 U.S.C. §1673(b)(2)(A) and (B). Furthermore, no court of any state and no state agency may make, execute or enforce any order or process in violation of Section 1673. 15 U.S.C. 1673(c).

When Congress enacted the Consumer Credit Protection Act in July 1970, it made findings outlining (i) the purpose of restrictions on garnishments, (ii) the disadvantages of garnishments, (iii) the

necessity of regulation and (iv) the necessary prohibitions relating to garnishment. Furthermore, Congress realized that the restrictions had to apply to the courts of United States and the States because it would be the courts giving effect to the execution and enforcement of garnishment orders. 15 U.S.C. §1671.

To the Petitioner's knowledge, this Court (i.e., the Supreme Court of the United States) has never addressed this issue, i.e., a violation of the garnishment limitations arising out of a domestic relations court's support order.

In the case of Pruitt, the Trial Court ordered the Appellant to pay the amount of $7,532.46 per month of combined child and spousal support secured by means of a support withholding or deduction notice to obligor's income source. (emphasis added). See Appendix A. The award amounted to seventy-four percent (74%) of the Appellant's disposable earnings. In conflict with the Judgment Entry, Appellant's employer, Ernst & Young, limited its garnishment withholding to the federal limitation, i.e., sixty percent (60%) of the Appellant's disposable earnings.

The Trial Court's imposition of a draconian coercive penalty - i.e., the forfeiture of the Appellant's residence with an estimated net value of $100,000 - constitutes a violation of the Appellant's right to due process of law. The only issue before the Court on June 28, 2005 was the alleged arrearage in support. The evidence introduced by Appellant reflected that the arrearage was $8,776. It is impossible to know the actual arrearage due because the Trial Court never made that determination in its Judgment Entry. Thus, the Trial Court's purge order was both arbitrary and irrational and should shock the conscience of this Court. See, e.g., *Board of Regents v. Roth*, 408 U.S. 564, (1972); *Matthews v. Eldridge*, 424 U.S. 319, (1976); *Independent Enterprises v. Pittsburgh*, 103 F.3d 1165, 1177 (3rd Cir. 1997); See also, *Swales v. Township of Ravenna*, 989 F.Supp. 925 (N.D. Ohio 1997); *Wolff v. McDonnell*, 418 U.S. 539, 557-58 (1974). "Substantive due process" requires in addition that decision-makers not act in a manner which is "wholly arbitrary or irrational." *Martinez v. California*, 444 U.S. 277, 282, (1980). Indeed, the timing of the Trial Court's jail threat was itself a violation of Appellant's due process rights inasmuch as Pruitt had no

meaningful notice that he might be immediately incarcerated or deprived of important property interests without any reasonable opportunity to purge a contempt. *Terrace Knolls, Inc. v. Dalton, Dalton, Little & Newport, Inc.*, (N.D. Ohio 1983), 571 F.Supp. 1086, affirmed, 751 F.2d 387; *Boals v. Gray*, 577 F.Supp. 288 (N.D. Ohio 1997).

Approximately two months after the forfeiture of the Appellant's residence, i.e., on August 25, 2005, the Court of Appeals set aside, in part, the Support Order so that the disputed arrearage would not have existed had the Court of Appeals ruling been issued at the time of the Show Cause hearing before the Trial Court. See Appendix "E".

The State of Ohio has adopted the express language of the "ceiling" imposed by Section 1673(b), Title 15 U.S. Code, for withholding against wages. See Ohio Revised Code 3113.21. While this issue has been reviewed from time to time by Appellate Courts in the State of Ohio, it has never been addressed by the Supreme Court of Ohio.

In his briefs, the Appellant relied upon the holding in *Hockenberry v. Hockenberry*, 75 Ohio App.3d 806 (1992), 600 N.E. 2d 839. In *Hockenberry*, the trial court had imposed a withholding order for child support exceeding 60% of the husband's disposable earnings and a withholding order for child support arrearages in excess of 65% of the husband's disposable earnings. Because the husband had no other sources of income from which to pay the support order, the Henry County, Ohio Court of Appeals reversed the trial court, finding that, where there was no other source of income to pay a support order, an order in excess of the 60% limitation violated the Consumer Credit Protection Act. 15 U.S.C. §1673(b). This is exactly the case of Pruitt. The Appellant here has no other source of income from which to pay that part of the support order which exceeds the withholding limitation.

Other Ohio Courts have found that wage withholding orders in excess of the withholding limits imposed by R.C. 3113.21(D) and 15 U.S.C. §1673(b) to be erroneous, these Courts have distinguished these cases by also holding that these statutory withholding limits do not impose limitations on a trial court's ability to order support in

excess of those limits, but only restricts the trial court's ability to order wage withholdings beyond those limits. See, e.g., *Arthur v. Arthur*, 130 Ohio App.3d 398 (1998); *Fasano v. Fasano*, Unreported, Eighth District Court of Appeals, Cuyahoga County, Ohio, No. 74040 (May 6, 1999).

Only a limited number of Federal Courts have addressed the issues that we confront in this case. In *Marshall v. Dist. Court for Forty-First-b Jud. Dist.* (E.D. Mich. 1978), 444 F.Supp. 1110, the Court addressed the priority of exempt versus nonexempt garnishment orders under the Consumer Credit Protection Act. *Id.* at 1116. What is important, however, from *Marshall* is that the District Court invoked the Supremacy Clause stating:

> 36. Under the supremacy clause in Article VI of the federal Constitution, federal law, when within the scope of the powers delegated to the federal government by the federal Constitution, takes precedence over State law; and State courts, just as much as the federal courts, must follow and give precedence to such federal law, especially where the law includes a command expressly running to such courts, as is true under section 303(c) of the Act.

Marshall at 1116. In *Long Island Trust Co. v. U.S. Postal Service*, 647 F.2d 336, (2d Cir. 1981), the appellant had argued that the

purpose of the Consumer Credit Protection Act was primarily for the protection of creditors. The Second Circuit Court of Appeals summarily rejected that argument. *Id.* at 339. The Second Circuit in *Long Island* went on to discuss the background of the Act, its purposes and the intent of Congress, stating that Congress acted not to protect the rights of creditors but to limit the ills that flowed from the unrestricted garnishment of wages, the burgeoning number of personal bankruptcies and the undue burden on interstate commerce. *Id.* at 339, citing H.R. Rep. No. 1040, 90th Cong., 2d Sess. (1968), *reprinted in* 2 (1968) U.S. Code Cong. & Ad. News 1962, 1979. Furthermore, the Second Circuit pointed out that the Act specifically intended to limit the garnishment of wages for child support and alimony. *Id.* at 341. Hence, the purpose of the Act plainly invokes interstate commerce and protection of debtors (not creditors), including individuals subject to domestic child and spousal support orders.

Appellant filed his Notice of Appeal of the finding of contempt and the forfeiture of his home to the Eighth District Court of Appeals. However, the Court of Appeals *sua sponte* dismissed

the Appeal citing *In Re: Ralph Watts* (Jan. 31, 2002), Cuyahoga Appeals No. 78713, 78991. *In Re: Watts* stated that:

> Where a **criminal defendant has been convicted of a misdemeanor** and has **voluntarily** satisfied his or her judgment for that offense, an appeal from the conviction is moot unless the defendant **has offered evidence from which an inference can be drawn** that he or she will suffer some **collateral legal disability** or **loss of civil rights**. ***(emphasis added)***

In Re: Watts cited *State v. Golston* (1994), 71 Ohio St.3d 224, which cited *State v. Wilson* (1975), 41 Ohio St.2d 236, 325 N.E.2d 236 and *State v. Berdnt* (1987), 29 Ohio St.3d 3, 504 N.E.2d 712, all criminal cases. The evidence in *Watts* showed that Watts had been held in contempt on three (3) separate occasions for violating the standing orders. The offense was a misdemeanor because imprisonment in excess of one (1) year could not be imposed pursuant to O.R.C. 2901.02. Furthermore, Mr. Watts failed to present any evidence from which an inference could be drawn that he would suffer some collateral legal disability or loss of Civil Rights.

The circumstances of this Appellant are completely distinguishable from those in *In Re: Watts*. Pruitt did not voluntarily quit claim the deed to his residence. Pruitt was not convicted of a

misdemeanor. Pruitt's contempt proceeding was civil in nature and not a criminal proceeding. And, finally, Pruitt has suffered a collateral legal disability or loss of Civil Rights.

In *Dombroski v. Dombroski*, Unreported, (September 28, 1999) Seventh District Court of Appeals, Harrison County, Ohio App.No.506, the Court notably distinguished criminal and civil contempt, but it went much further and stated that the trial court essentially modified its division of property by ordering property to be sold and the proceeds to be divided equally between the parties. The Court stated:

> This sanction effectively modifies the distribution of property made under the divorce decree. Given the general rule that the property division may not be subsequently modified, this raises the question of whether the trial court had the jurisdiction or authority to do so in this case. *Id.* at 5 of 12.

This is similar to what happened in the instant case. The Trial Court modified the division of property set forth in the Judgment Entry of Divorce through the vehicle of the contempt proceeding. The Appellant was unaware and had no notice that his residence could be forfeited or that the Trial Court could further divide the marital

property. He was only on notice of the alleged support arrearage, which he disputed.

The most noteworthy Ohio case relevant to this argument is *In Re: Contempt of Morris* (1996), 110 Ohio App.3d 475, decided in the Eighth District Court of Appeals, Cuyahoga County, on April 22, 1996. In *Morris*, an attorney was representing a criminal defendant in a sentencing hearing. *Morris* attempted to object to testimony by the victim's mother, who was giving an impact statement. The *Morris* Trial Court stated from the bench:

> You are in contempt of court. Your fine, at this point is $250. Have a seat. If you rise again, the next fine will be $500; if you rise again, the next fine will be $750; if you rise again, it is going to $1,000 and six months incarceration.

Later in the hearing, Attorney Morris was given the opportunity to address the trial court regarding the contempt. However, "[w]hen the appellant attempted to explain why he objected to the victim impact statement, the trial court stated that appellant wished [sic] to purge himself of the contempt and told appellant to pay the $250 fine before he left the court". *In Re Morris* at 478. The Court of Appeals confronted the issue directly and stated that:

> Appellant was ordered by the trial court to pay his fine before he left the courtroom. Appellant was not given a choice of whether to complete his obligation to the trial court through payment of the fine. Compliance with such a directive is **not a voluntary** payment of a fine. The doctrine of mootness will be applied only where a defendant has **voluntarily** paid the fine. ***(emphasis added)***.

The Court of Appeals then denied the State's motion to dismiss the appeal. *In Re Morris* at 479.

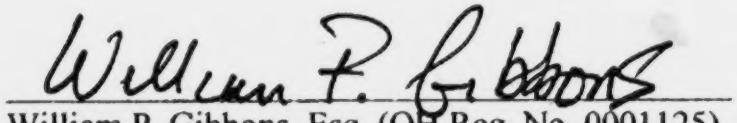
The foregoing reflects circumstances similar to those that were present at the conclusion of the June 28, 2005 contempt hearing for Appellant. Appellant attempted to pay the amount of $14,500 to his former spouse in order to purge any finding of contempt. The Court however refused to accept that purge or payment and instead repeated that Pruitt either surrender his passport, quitclaim his interest in his residence or be immediately jailed for thirty days. Because of his obligation to report for work on July 1, 2005 in Australia, to protect his reputation as a certified public accountant and in order to live with his new wife, Appellant was forced to quitclaim his residence to the Appellee. To prohibit Appellant from raising the issue of the irregularity of his contempt sanction on appeal under these circumstances is manifestly unjust and deprives

him of his property and civil rights without due process under the Fourteenth Amendment to the U.S. Constitution.

Appellant was denied substantive and procedural due process of law (i) by virtue of the Trial Court's excessive support order in violation of Section 303(b) of the Consumer Credit Protection Act inasmuch as the Appellant has no other sources of income to pay such support order other than his wages, (ii) because Appellant had no notice that his home could be forfeitued, (iii) by the forfeiture of Appellant's home, which was arbitrary, irrational and shocking, and (iv) the denial of Appellant's right to appeal the finding of contempt and the forfeiture of his residence.

For all of the foregoing reasons, this petition should be granted as to both Issues.

Respectfully submitted,



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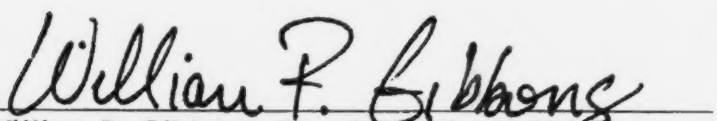
PROOF OF SERVICE

I certify that a copy of this Petition for a Writ of Certiorari was sent by ordinary U.S. Mail, postage prepaid, to counsel for the Plaintiff-Appellee, Deborah Akers-Parry, Esq., Wolf & Akers, 1515 East Ohio Building, 1717 East 9th Street, Cleveland, Ohio 44114, this 25th day of April 2006.



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